MAGISTRATE'S APPEAL.

S. H. D. Elias for the appellant.

A. H. Simpson (Crown Counsel) for the Crown.

Brown, J. : — In accordance with sub-section (2) of section 313 of the Criminal Procedure Code I set out the grounds upon which the Magistrate's order was varied :—

The appellant was charged under section 324 of the Penal Code with voluntarily causing hurt by means of a stick which used as a weapon of offence is likely to cause death. The evidence was that the stick was about 36" in length and 1½" in width. No doubt this instument, if used in a certain way, could cause death. So could many other lesser instruments. But the object of the section is to punish more severely an offender who uses a weapon such as a knife or a hot iron, for he is a much more dangerous member of society than a man who only uses a stick. The question, in determining whether the charge is properly laid under this section, is whether the instrument is intrinsically likely to cause death; not whether the instrument, if used in a certain way, might cause death. In my opinion the charge should have been under section 323, and I substituted a conviction under that section.

In the course of his argument counsel for the appellant complained that the grounds of Judgment were meagre. I considered that there was some substance in that complaint. The main ground for complaint is that the defence is not referred to at all. This should always be done. The Magistrate ought to show in his grounds of Judgment that the defence has been carefully considered and his reasons for rejecting it.

Magistrate's order varied.

QUEK BEE YAM v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Storr, J.) May 31, 1952]
[Johore Bahru — Criminal Appeal No. 6 of 1952]

Opium and Chandu Proclamation No. 49 of 1946, s. 3(1) — Possession of opium — Criminal Procedure Code (Cap. 6), s. 173(f).

On March 14, 1951, the appellant was a passenger in a car which, on instruction by the police, was stopped at the 1st milestone road block Mersing-Jemaluang road and was taken to Mersing Police Station. The car was driven by one Teoh Geok Soo (1st accused in the lower Court) and the appellant (2nd accused in the lower Court) was seated beside him. The car was searched and, concealed under zinc covers which were properly screwed to the floor board and covered over with rubber matting in the front of the car both under the places where the driver and the appellant, the passenger, would normally have their feet while in the car, and also in the rear of the car, the police found 11 packets of opium. Both the accused were arrested and charged. The learned Magistrate found both accused guilty and accordingly convicted them.

Held, that the conviction could not be sustained because the prosecution failed to prove that (a) the appellant had knowledge that the opium was concealed in the containers under the floor boards, (b) such opium was in his custody, (c) he had any control over it, (d) he intended to exercise such control, or (e) he was in any way in possession of it.

CRIMINAL APPEAL.

C. G. Toh for the appellant.

T. R. Hepworth (Legal Adviser, Johore) for the respondent.

Cur. Adv. Vult.

Storr, J. : — The facts briefly in this case were that the appellant was a passenger in an Austin 7 car (No. S 4149) driven by one Teoh Geok Soo (1st accused in Court below) from Jemaluang to Mersing on the 14th March, 1951. On driving through Jemaluang, a Detective Police Constable called out to the appellant by name, in the hope that he would have the car stopped. The Detective Police Constable did not, however, make any signs to the driver to stop the car and the car did not stop. As the Detective Police Constable suspected that opium was concealed in the car, he telephoned to the Mersing Police and the car was eventually stopped at a police stop one mile outside Mersing and was taken to the police station. Upon a search being made there, containers approximately 1½ inches in depth, screwed to the floor board and covered over with rubber matting were found in the front of the car both under the places where the driver and the appellant, the passenger, would normally have their feet. There were also found in the back foot wells of the car other similar containers. In the container under the appellant's feet were found 2 slabs of opium, and in the containers in the rear foot-wells of the car were found in all 9 slabs of opium. The police stated that when the appellant and the driver were stopped at the road block and when they entered the police station both of them looked pale and frightened. It was not suggested anywhere by the prosecution that the appellant was in charge of, or driving, the car or that he was the owner.

The learned President of the Sessions Court drew an inference of guilty knowledge on the part of the appellant because when the Detective Police Constable called out the appellant's name, he, the appellant, did not ask the driver to stop. For that reason the learned President held there was a *prima facie* against the appellant and called on him for his defence.

I have gone through the evidence of the prosecution with great care, but I cannot find anything in such evidence to raise more than the slightest suspicion (1) that the appellant had knowledge that the opium was concealed in the containers under the floor boards, (2) that such opium was in his custody, (3) that he had any control over it, (4) that he intended to exercise such control, or (5) that he was in any way in possession of it. The mere fact that he was a passenger in a car in which opium was very cleverly concealed in containers screwed to the floor boards underneath his feet cannot in my mind raise more than a mere

suspicion of knowledge on his part. I therefore do not consider that the prosecution had at the end of their case made out a case against the appellant which, if unrebutted, would warrant a conviction. The appellant therefore should not have been called on for his defence.

For the above reasons I allow the appeal, quash the conviction and set aside the sentence.

Appeal allowed.

M. PR. KANNAPPA CHETTIAR v. L. R. M. LETCHUMANAN CHETTIAR.

[Orig. Civ. Juris. (Thomson, J.) July 29, 1952]

[Ipoh — Civil Appeal No. 7 of 1952]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 11 — Appeal to High Court — Jurisdiction — Interpretation.

This was an application to the High Court by way of appeal from the decision of the Ipoh Rent Assessment Board whereby the Board refused permission to the appellant to apply to the appropriate Court for ejectment of the respondent.

Held, that (1) the High Court has no jurisdiction to entertain appeals from any statutory tribunal unless such jurisdiction is expressly given to it by Statute. Section 11 of the Ordinance as amended by section 3 of the Control of Rent Ordinance, 1952 does not expressly give such jurisdiction and the Court cannot by implication assume that it did; (2) the initiative lies upon the appellate Court to take objection on the point of want of jurisdiction even though it was not raised by either party.

Cases referred to :—

(1) *R. v. Hanson* 4 B. & Ald. 519, 521.
(2) *Benson v. N. Ireland Road Transport Board* (1924) A.C. 520, 525.
(3) *Racecourse Betting Control Board v. Secretary of State for Air* (1944) 1 All E.R. 60, 61.
(4) *Sim Hock Ann v. Goh Siew Chiang* (1949) M.L.J. 62.
(5) *Foong Kooi v. Wong Ching* (1950) M.L.J. 159.
(6) *Wagner v. Singam* (1950) M.L.J. 235.
(7) *Magor & St. Mellons Rural District Council v. Newport Corpn.* (1952) A.C. 189.
(8) *Westminster Bank Ltd. v. Edwards* (1942) A.C. 529, 533.

CIVIL APPEAL.

R. H. V. Rintoul for the appellant.

Ong Huck Lim for the respondent.

Cur. Adv. Vult.

Thomson, J. : — This proceeding purports to be an appeal from a decision of the Ipoh Rent Assessment Board under the Control of Rent Ordinance, 1948, whereby the Board refused permission to the present appellant to apply to the appropriate Court for ejectment of the present respondent from certain premises in Ipoh. In view of the conclusion to which I have been compelled, I think the grounds of appeal can be sufficiently summarised as being that the Board applied wrong principles to the evidence before it and misdirected itself in law in arriving at the decision at which it did arrive although in making that decision it was not going beyond the jurisdiction conferred upon it by the Ordinance.

In my opinion, for which I shall proceed to state my reasons, this Court has no jurisdiction to entertain any such appeal.

The Rent Assessment Board is the creature of the Control of Rent Ordinance, 1948. The principal purpose of that Ordinance is to control the rents of certain classes of property but it also contains provisions (sections 12 and 13) which restrict the rights of owners of property to obtain possession of their property by providing that (except in the case of non-payment of rent) no landlord may apply to any Court for the ejectment of a tenant from his property without the permission of the Rent Board. The Board is given power *inter alia* to fix rents and to grant permission to landlords to sue for ejectment.

By section 10 the Board may at any stage of any proceedings before it reserve for consideration of the High Court any question of law that may arise, and that section proceeds to lay down the procedure to be followed in this connection and to state that "the High Court shall hear and determine the question .... of law arising on such special case". I pause here to observe that it may be that if the Board refused to state such a special case when asked to do so by a party to a proceeding before it, it is possible that an order of *mandamus* would issue to compel it to do so. I refrain, however, from expressing any opinion on the point.

The Ordinance then contains a provision relating to appeals but before dealing with that provision it is to be observed that it is well settled law that, apart from its powers *tanta et talia* to issue orders of *certiorari* and *mandamus*, this Court has no jurisdiction to entertain appeals from any statutory tribunal unless such jurisdiction is expressly given to it by statute. "The rule of law that although a *certiorari* lies unless expressly taken away, yet an appeal does not lie unless expressly given by statute." (*R. v. Hanson*[1] — per Abbott, C.J.) or, as was said by Viscount Simon, L.C., in the case of *Benson v. N. Ireland Road Transport Board*[2], "rights to appeal exist only by statute", or again as it was put by the late Master of the Rolls in the case of *Racecourse Betting Control Board v. Secretary of State for Air*[3] :—

"In the case of new tribunals set up under statute, no appeal will lie unless the right of appeal is conferred expressly or impliedly by statute, and accordingly where, as in the present case, no right of appeal is given, their decisions are not appealable."

In the Control of Rent Ordinance the only provisions relating to appeals are to be found in section